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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/603,012	10/21/2009	Kacie Alane Theisen	81182925	5731

28395 7590 12/13/2016  
BROOKS KUSHMAN P.C./FGTL  
1000 TOWN CENTER  
22ND FLOOR  
SOUTHFIELD, MI 48075-1238

EXAMINER
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DAGER, JONATHAN M

ART UNIT	PAPER NUMBER
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3663

NOTIFICATION DATE	DELIVERY MODE
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12/13/2016

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* KACIE ALANE THEISEN,  
PERRY ROBINSON MACNEILLE, ERICA KLAMPFL, and  
OLEG YURIEVITCH GUSIKHIN

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Appeal 2014-009307  
Application 12/603,012  
Technology Center 3600

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Before JENNIFER D. BAHR, GEORGE R. HOSKINS, and  
ARTHUR M. PESLAK, *Administrative Patent Judges*.

BAHR, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Kacie Alane Theisen et al. (Appellants) appeal under 35 U.S.C.  
§ 134(a) from the Examiner's decision rejecting claims 1–6, 8–12, and 14–  
19, which are all of the pending claims. We have jurisdiction under  
35 U.S.C. § 6(b).

We AFFIRM.

### THE CLAIMED SUBJECT MATTER

Claim 1, reproduced below, is illustrative of the claimed subject matter.

1. An emotive advisory system for use by one or more occupants of an automotive vehicle, the system comprising:
  - a computer configured to
    - receive input indicative of an operating state of the vehicle,
    - determine at least one of a need to provide owner's manual information to an occupant based on the operating state of the vehicle and a request to provide owner's manual information to the occupant,
    - generate (i) data representing an avatar having an appearance and (ii) data representing a spoken statement for the avatar, the appearance and the spoken statement conveying a simulated emotional state of the avatar to the occupant, and the spoken statement providing owner's manual information to the occupant in spoken dialog based on at least one of the need and the request,
    - output the data representing the avatar for visual display, and
    - output the data representing the statement for the avatar for audio play.

### REJECTIONS

- I. Claims 1–6, 9–12, and 14–18 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Evans (US 2009/0144622 A1, pub. June 4, 2009) and Filev (US 2008/0269958 A1, pub. Oct. 30, 2008).
- II. Claims 8 and 19 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Evans, Filev, and Luskin (US 2005/0131595 A1, pub. June 16, 2005).

## DISCUSSION

### *Rejection I*

In contesting the rejection of claims 2–6, 9–12, and 14–18, Appellants rely on their arguments presented for claim 1. Appeal Br. 4. We select claim 1 as representative of claims 1–6, 9–12, and 14–18 subject to this rejection, and claims 2–6, 9–12, and 14–18 stand or fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

The Examiner finds that Evans discloses a system substantially as claimed in claim 1, including generating and outputting “data representative of an avatar having an appearance and data representing a statement from the avatar,” with the exception that “Evans is silent as to the appearance and the spoken statement from the avatar conveying a simulated emotional state of the avatar to the occupant.” Ans. 3. The Examiner finds, however, that “Filev, in a similar invention in the same field of endeavor, teaches that in response to the state of the vehicle and/or driver, the appearance and the spoken statement of the avatar conveys a simulated emotional state of the avatar to the occupant.” *Id.* (citing Filev ¶¶ 32, 64, 122, 123, 142). The Examiner determines that it would have been obvious “to combine the avatar of Evans with the avatar features of Filev to achieve the predictable result of altering the appearance and voice of the avatar to convey the simulated emotional state of the avatar to the occupant.” *Id.* at 3–4. The Examiner states that “[d]oing so would immediately alert the driver as to an urgent condition of the vehicle while traveling.” Final Act. 5. Moreover, according to the Examiner, “[d]oing so would not only provide a further visual alert to the driver in an urgent condition such as harsh handling, but would further provide a calming influence to a stressed driver.” Ans. 4.

Appellants argue that “[t]he [E]xaminer’s reasoning suggests that Evans cannot immediately alert the driver as to an urgent condition of the vehicle while travelling—which is not true” and that “the [E]xaminer creates a problem within the context of Evans that does not otherwise exist for the sole purpose of finding reason to combine the teachings of the references.” Appeal Br. 3. Appellants assert that Evans’s “‘LOW TIRE PRESSURE ALERT’ is an example of [the type of] simple and direct notification” that a driver needs in urgent situations, and that, “[i]n contrast, the emotion expressed by Filev’s avatar is designed to prompt a driver to ask questions (as opposed to quickly convey information).” Reply Br. 2. As such, Appellants contend that the “LOW TIRE PRESSURE ALERT” warning indicium of Evans “is more effective than an avatar’s emotion.” *Id.* Thus, Appellants urge that the Examiner’s articulated “reason to combine the teachings of the references lack[s] merit.” *Id.*

The Examiner maintains that one would have been motivated to “augment[] the avatar of Evans with the teachings of Filev” “to better alert the driver as to an urgent condition, such as harsh driving of the vehicle as outlined in [paragraph 33] of Filev, but also to help reduce the driver’s tension in stressful situations by adapting the avatar’s appearance and spoken statement to a more soothing output.” Ans. 5; *see* Filev ¶ 32 (disclosing that when outputs from head sensors indicate that the occupant is angry, “the avatar may be rendered in blue color tones with a concerned facial expression and ask in a calm voice ‘Is something bothering you?’”), ¶ 33 (describing the avatar appearing to become frustrated upon the system sensing the vehicle experiencing “frequent acceleration and deceleration or otherwise harsh handling” and the avatar informing the occupant that this

driving is hurting the vehicle's fuel efficiency and requesting the occupant to cut down on frequent acceleration and deceleration).

Appellants' arguments are not persuasive. First, Appellants' contention that the "LOW TIRE PRESSURE ALERT" indicium of Evans is more effective than an avatar with an emotion-simulating appearance and spoken statement amounts to unsupported attorney argument, and therefore, is entitled to little, if any, weight. *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997). Appellants provide no evidence or persuasive technical reasoning to show that a person having ordinary skill in the art would doubt or disregard Filev's teaching that "the EAS . . . may use simulated emotion to convey the urgency of what is being said, to appeal to the occupant's emotions, to convey the state of the vehicle systems . . . , etc." Filev ¶ 121. Moreover, even assuming that an alert indication such as the "LOW TIRE PRESSURE ALERT" indicium of Evans might be more effective in alerting some persons in some situations as to the urgency of a situation, the combination of the *avatar* of Evans<sup>1</sup> with the emotion-simulating avatar features taught by Filev as proposed by the Examiner (Ans. 3) does not require the elimination of such alert indicia.

Appellants also argue that the Examiner's "comments regarding predictability completely ignore the complexity associated with" Evans and Filev. Appeal Br. 3. According to Appellants, "Filev involves a complexity of the highest degree: altering the appearance and voice of an avatar to convey a simulated emotional (human) state responsive to a driver." *Id.* at 4.

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<sup>1</sup> See Evans ¶¶ 34, 35 (disclosing "the virtual assistant may include a computer-simulated display of a human" or "an interactive cartoon character" and "may provide mechanical problem information").

Thus, Appellants contend that “one of ordinary skill would not have thought that the teachings of the references could have been combined, *a fortiori*, combined [*sic*] to achieve a predictable result.” *Id.* Appellants’ argument regarding the complexity of Filev fails to take full account of the level of skill in the art evidenced by Filev. Aside from a bald argument that one of ordinary skill in the art would not have thought the features of Filev could be combined with the system of Evans to achieve a predictable result because Filev’s system presents complexity, Appellants do not identify any reason why such a combination would have been uniquely challenging or been beyond the technical grasp of a person having ordinary skill in the art, as evidenced by the teachings of Evans and Filev.

For the above reasons, Appellants fail to apprise us of error in the rejection of claim 1. Accordingly, we sustain the rejection of claim 1 and claims 2–6, 9–12, and 14–18, which fall with claim 1, under 35 U.S.C. § 103(a) as unpatentable over Evans and Filev.

#### *Rejection II*

In contesting the rejection of claims 8 and 19, Appellants do not present any separate arguments for the patentability of these claims, aside from their dependence from claims 1 and 9, respectively. Appeal Br. 4. Thus, for the reasons set forth above with regard to the rejection of claims 1 and 9, we also sustain the rejection of claims 8 and 19 under 35 U.S.C. § 103(a) as unpatentable over Evans, Filev, and Luskin.

#### DECISION

The Examiner’s decision rejecting claims 1–6, 8–12, and 14–19 is AFFIRMED.

Appeal 2014-009307  
Application 12/603,012

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED